

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE LITIGATION

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)  
) MDL No. 1456

THIS DOCUMENT RELATES TO  
01-CV-12257-PBS, 01-CV-339 AND  
1:03-CV-11226-PBS

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) Civil Action No. 01-CV-12257 PBS  
)  
) Judge Patti B. Saris  
) Chief Magistrate Judge Marianne B. Bowler

**TRACK 1 DEFENDANTS' MOTION FOR LEAVE TO FILE UNDER SEAL**

1. Defendant Bristol-Myers Squibb Co. ("BMS") on behalf of the Track 1 Defendants respectively moves this Court for leave to file under seal Exhibits 37-53 of the Declaration of Steven M. Edwards in Support of Track 1 Defendants' Motion to Preclude the Expert Testimony of Dr. Raymond Hartman pursuant to the Protective Order entered by this Court on December 13, 2002.

2. Exhibits 37-51 are copies of deposition transcripts of third-party payors for which these deponents have claimed confidentiality, designating the transcripts "Confidential" or "Highly Confidential". Before making the *Daubert* motion, Track 1 Defendants' counsel consulted with Plaintiffs' counsel regarding whether the deposition transcripts of third-party payors should be filed under seal. Plaintiffs' counsel suggested that these depositions be filed under seal because they could not determine whether these depositions should be sealed until after Track 1 Defendants filed the *Daubert* motion.

3. Exhibits 52 contain exhibits to a letter from Zachary Bentley and T. Mark Jones of Ven-A-Care to Bruce Vladeck dated October 2, 1996. Exhibit 53 contains information derived from these exhibits. At oral argument on BMS' motion to compel the production of the

Ven-A-Care exhibits, Ven-A-Care opposed the motion to compel by arguing that these exhibits contained confidential information. Subsequently, BMS and Ven-A-Care entered into a stipulation whereby Ven-A-Care agreed to produce the exhibits to the October 2, 1996 letter but limited the production to the parties in 01-CV-12557-PBS and 01-CV-339. On June 13, 2006, BMS's counsel sought permission from Ven-A-Care's counsel to file the exhibits publicly but received no response.

WHEREFORE, BMS respectfully requests that this Court grant it leave to file the foregoing listed documents under seal.

Dated: Boston, Massachusetts  
June 16, 2006

Respectfully Submitted,

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Attorneys for Defendant Bristol-Myers Squibb  
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**CERTIFICATE OF SERVICE**

I certify that on June 16, 2006 a true and correct copy of the forgoing document was served on all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Lyndon M. Tretter

Lyndon M. Tretter